

Remarks

Claims 40-67 are pending in the Application. Claims 63-67 have been added. No new matter has been added. Entry of the amendment is respectfully requested. Reconsideration is respectfully requested.

Basis for claims 63 and 64 may be found for example in claims 46 and 57, and at Specification page 26, line 5 to page 27, line 5.

Basis for the claim 65 may be found for example in the Specification at page 14, lines 3-15.

Basis for claim 66 may be found for example in the Specification at page 15, lines 4-10, and Figure 2.

Basis for claim 67 may be found for example in the Specification at page 31, lines 7-15, and Figure 14.

35 U.S.C. § 112, Second Paragraph, Rejection

In the Action, claims 40-60 were rejected pursuant to 35 U.S.C. § 112, second paragraph. These rejections are respectfully traversed.

The Action indicates that using “or” creates vague and indefinite claims (as in paper number 6). The Action further indicates that these claims have been examined presuming the use of a Boolean “OR.”

The Applicants respectfully disagree that the use of the term “or” renders the claims indefinite. For example, claim 40 clearly recites either “adding” at least one medical item or

“removing” at least one medical item. Claim 40 is neither vague nor indefinite. Likewise, the other claims with the term “or” are not vague nor indefinite. The Action’s presumption of “or” was not necessary since “or” is already clearly recited in the claim. Furthermore, it is noted that the cited U.S. Patent 5,745,366, for example at claim 1, used the acceptable term “or.” Also, the cited U.S. Patent 5,805,456, for example at claim 51, used the acceptable term “or.”

The Action’s suggestion to restructure the “elements” if coverage encompassing alternative “elements” is sought is unclear, because the claims are method claims.

Nevertheless, to expedite prosecution, the Applicants would be willing to amend the current claim language of “adding or removing at least one medical item from the holder” to the language of “transferring at least one medical item from or to the holder”, with the approval of the Office.

It is respectfully submitted that the 35 U.S.C. § 112, second paragraph, rejections are not appropriate and withdrawal thereof is requested.

The Pending Claims Are Not Anticipated or Obvious in View of the Applied Art

Claims 40, 42, 43, and 46-47 were rejected under 35 U.S.C. § 102(e) as being anticipated by Higham et al. (“Higham”).

Claims 40, 42, 43, and 46-47 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kraft et al. (“Kraft”).

Claims 40, 42, 43, 49-51, and 60-61 were rejected under 35 U.S.C. § 102(b) as being anticipated by Blechle.

Claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham.

Claims 40-44, 46-49, 52-60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham in view of Kraft.

Claims 40-49, 52-60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kraft in view of Pitel et al. ("Pitel").

Claims 40, 43, 45, 52, 53, and 56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pitel.

Claims 40, 42-44, 46, 48-51, 55, and 59-62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Blechle in view of Kraft.

Claims 40-43, 46-47, 49-54, and 57-62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham in view of Blechle.

These rejections are respectfully traversed.

**The Applied References Do Not Disclose or Suggest
the Features and Relationships Recited in Applicants' Claims**

Anticipation pursuant to 35 U.S.C. § 102 requires that a single prior art reference contain all the elements of the claimed invention arranged in the manner recited in the claim. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

Anticipation under 35 U.S.C. § 102 requires in a single prior art disclosure, each and every element of the claimed invention arranged in a manner such that the reference would

literally infringe the claims at issue if made later in time. *Lewmar Marine, Inc. v. Barient, Inc.*, 822 F.2d 744, 747, 3 USPQ2d 1766, 1768 (Fed. Cir. 1987).

Before a claim may be rejected on the basis of obviousness pursuant to 35 U.S.C. § 103, the Patent Office bears the burden of establishing that all the recited features of the claim are known in the prior art. This is known as *prima facie obviousness*. To establish *prima facie* obviousness, it must be shown that all the elements and relationships recited in the claim are known in the prior art. MPEP § 2142.

Absent a showing of a teaching, suggestion or motivation to produce a claimed combination, an obviousness rejection is not proper. *Panduit Corp. v. Denison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593 (Fed. Cir. 1987). *In re Newell*, 891 F.2d 899, 901, 902, 13 USPQ2d 1248, 1250 (Fed. Cir. 1989).

The teaching, suggestion or motivation to combine the features in prior art references must be clearly and particularly identified in such prior art to support a rejection on the basis of obviousness. It is not sufficient to offer a broad range of sources and make conclusory statements. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

It is respectfully submitted that the Action does not meet these burdens.

Furthermore, the Action does not state in any way that is reasonably understandable by Applicants, where the specific features recited in Applicants' claims are allegedly found in the cited art. Not one rejection based on prior art has specifically labeled the claimed features allegedly found in the applied reference(s). Nor is there any citation to any alleged teaching, suggestion, or motivation in the prior art to combine features to produce the invention as claimed

by Applicants. For this reason it is respectfully submitted that the Action is legally insufficient as it fails to establish anticipation or a prima facie case of obviousness against any of the claims. Applicants request that the rejections be withdrawn.

Because the Action fails to directly apply the references to the claims, Applicants have been unduly burdened by having to speculate as to possible rationales for the rejections. Applicants have reviewed the references cited and have determined for the reasons stated herein that the cited references, taken individually or as a whole, clearly do not teach or suggest the invention recited in Applicants' claims. Therefore, the claims directed to the present invention are not anticipated and would not have been obvious to one having ordinary skill in the art.

**The Features Recited in Applicants' Claims
Patentably Distinguish Over Higham**

In the Action claims 40, 42, 43, and 46-47 were rejected under 35 U.S.C. § 102(e) as being anticipated by Higham.

These rejections are respectfully traversed. Applicants traverse these rejections on the grounds that the Higham reference does not contain all the elements of the claimed invention arranged in the manner recited in the claims. The features recited in Applicants' claims patentably distinguish over the Higham reference.

Furthermore, the Action has not stated where the specific features of Applicants' claims are allegedly found in the Higham reference. The Office is again respectfully asked to clearly state on the record which specific (numbered) features in the Higham reference directly

correspond to the claimed dispenser, enclosure, dispenser module, holder, dispenser mechanism, and medical item. The Action's failure to specifically indicate the presence of the recited claim features in the Higham reference constitutes Agency Action under the Administrative Procedures Act admitting that the reference does not meet the recited claim features. Allowance of the claims is respectfully requested on this basis.

The Action alleges that Higham discloses moving a dispenser module from a position within the enclosure to a position outside the enclosure (col. 18, lines 43-44). The referenced lines in Higham refer to a door (62), rack (48), and an item (52) (Figures 3B and 3C). However, as the rejection is best understood, it is unclear whether the Action alleges that Higham's rack (48) constitutes the dispenser module.

The Action further alleges that Higham discloses adding or removing at least one medical item from the holder while outside the enclosure (col. 18, lines 45-47). The referenced lines in Higham refer to a user manually removing an item (52).

The Action further alleges that Higham discloses moving the dispenser (sic) from outside the enclosure to within the enclosure such that the holder is within the enclosure (col. 22, lines 10-15). The referenced lines in Higham refer to a nurse closing a door (212). As the rejection is best understood, apparently Higham's alleged dispenser module has been switched from rack (48) to door (212). That is, as the rejection is best understood, it is unclear whether Higham's door (212) now allegedly constitutes the dispenser module.

It remains unclear as to what element in Higham constitutes the dispenser module. The Office has not clearly presented the rejection as is required by MPEP 707.07(d). Applicants have been left with the burden of trying to properly respond to an unclear Action.

The Action also refers to “an apparatus structural limitation unutilized by any method limitation.” However, the Action has not stated which specific structural feature is allegedly not a part of the method. Thus, since the Action has not stated the specific structural feature, Applicants are unable to respond to the allegation.

Claim 40

Claim 40 is an independent claim which is specifically directed to a method performed in connection with a dispenser. The claim specifically recites that the dispenser module “includes a holder enabling holding of medical items” and “a dispenser mechanism, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder.” Furthermore, the claim specifically recites that the dispenser module, while mounted, is movable “from a first position, wherein the dispenser module is within the enclosure, to a second position, wherein the holder extends outside the enclosure.”

In the operation of Higham, an item can be manually placed into or removed from a particular receptacle (36) of the withdrawn drawer (32) (col. 16, lines 37-45; col. 18, lines 43-47). Higham does not disclose a dispenser module including a “dispenser mechanism.” Nor does Higham disclose that the recited “dispenser mechanism” is “selectively operable to dispense medical items from the holder.” Higham’s manual removal of items actually teaches away from

using the recited “dispenser mechanism” to dispense medical items. Higham does not disclose a “dispenser” in the manner recited.

Higham does not disclose a dispenser module including a dispenser mechanism as specifically recited. Higham does not disclose a dispenser mechanism selectively operable to dispense medical items from the holder. Higham also does not disclose a mounted dispenser module including a “holder” and “a dispenser mechanism”, and moving the mounted dispenser module in the manner recited.

The Action does not even mention a “dispenser mechanism.” Nor does Higham disclose a “dispenser mechanism.” Nor does Higham disclose a “dispenser mechanism selectively operable to dispense medical items from the holder.” Nor does Higham disclose that a movably mounted dispenser module includes a dispenser mechanism. To make a valid rejection pursuant to 35 U.S.C. § 102 it must be shown by the Patent Office that Higham contains all the elements of the claimed invention arranged in the manner recited in the claim. Higham does not disclose a “dispenser mechanism” in the manner recited. It follows that Higham does not disclose moving a dispenser module which includes a dispenser mechanism.

Higham’s rack (48) cannot constitute the dispenser module because it does not include a “dispenser mechanism” in the manner recited. Higham’s door (212) cannot constitute the dispenser module because it does not include a “dispenser mechanism” in the manner recited. Both the rack (48) and door (212) simply allow a user to access an item contained therein.

Higham does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required to sustain the rejection. As Higham does not

disclose the recited method, Applicants' claim patentably distinguishes over the Higham reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(e) rejection is improper and claim 40 should be allowed. It follows that the claims which depend from claim 40 are likewise allowable.

**The Dependent Claims Recite Features Which Further
Patentably Distinguish Over Higham**

There are also a number of features that are expressly recited in claims that depend from claim 40 that further distinguish the preferred embodiment of the present invention over the cited art.

Therefore, Higham does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required for a valid rejection. As Higham does not disclose the recited method, Applicants' claims patentably distinguish over the Higham reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(e) rejections are further overcome due to recitation of these additional features in claims that depend from Claim 40.

Claim 42

Claim 42 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites "manually adding or removing at least one medical item from the holder."

As previously discussed, Higham does not disclose a dispenser module including a “dispenser mechanism” in the manner recited. It follows that Higham does not disclose the steps of “manually adding or removing at least one medical item from the holder” in combination with a “dispenser mechanism” that is “selectively operable to dispense medical items from the holder.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 43

Claim 43 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the dispenser further includes a path extending in the enclosure, wherein the path is in connection with a delivery area, whereby medical items are accessible to a user in the delivery area, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder at a dispense location.” The claim further recites moving the dispenser module “wherein the dispenser module is within the enclosure and the dispense location is positioned adjacent the path.” In Higham, an item (52) is removed manually. Higham does not disclose a “path” and “delivery area” and “dispense location” recited. Nor does Higham have any need for such. Nor does Higham disclose the recited relationship of the “path” and “delivery area” and “dispense location.” Thus, it is respectfully submitted that the claim is further allowable.

Claim 46

Claim 46 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that a “reference surface includes indicia thereon indicative of the number of medical items in the holder.” The

claim further recites “reading the indicia on the reference surface.” Higham does not disclose “indicia” on a “reference surface” in the manner recited. Nor does Higham disclose indicia “indicative of the number of medical items in the holder.” Thus, it is respectfully submitted that the claim is further allowable.

The Action alleges that Higham discloses reading indicia on a reference surface at col 5, lines 3-18. The referenced col 5, lines 3-18, appears directed to displaying types of items held by a unit. Higham does not disclose reading indicia on a reference surface. Higham does not disclose “indicia” or that a “reference surface includes indicia thereon” as recited in Claim 46. Nor does Higham disclose reading indicia “indicative of the number of medical items in the holder.” As Higham fails to disclose such features, it is respectfully submitted that the claim is further allowable.

Claim 47

Claim 47 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. This claim specifically recites a cover movably mounted on the dispenser module and that “the cover is prevented from moving to the up position when the dispenser module is in the first position.” Higham does not disclose a “cover” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

**The Features Recited in Applicants' Claims
Patentably Distinguish Over Kraft**

In the Action 40, 42, 43, and 46-47 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kraft.

The Action alleges that Kraft discloses moving the dispenser module from a position within the enclosure to a position outside the enclosure (col. 5, lines 15-20); adding or removing at least one medical item from the holder while outside the enclosure (col. 13, lines 45-56); moving the dispenser from outside the enclosure to within the enclosure such that the holder is within the enclosure (col. 8, lines 8-38); manually adding or removing at least one medical item from the holder (col. 4, lines 35-50); moving the dispenser out of the enclosure so as to make it manually accessible (col. 13, lines 38-57); reading indicia on a reference surface (co. 9. lines 1-28; col. 7, lines 59-65); and moving the cover to the up position prior to moving the cover to the down position (col. 12, line 58 to col. 13, line 3).

These rejections are respectfully traversed. Applicants traverse these rejections on the grounds that the Kraft reference does not contain all the elements of the claimed invention arranged in the manner recited in the claims. The features recited in Applicants' claims patentably distinguish over the Kraft reference.

Furthermore, the Action has again not stated where the specific features of Applicants' claims are allegedly found in the Kraft reference. The Office is respectfully asked to clearly state on the record which specific (numbered) features in the Kraft reference allegedly directly correspond to the features of the dispenser, enclosure, dispenser module, holder, dispenser

mechanism, and medical item as recited in the claim. The Action's failure to specifically indicate the presence of the recited claim features in the Kraft reference constitutes Agency Action under the Administrative Procedures Act which constitutes a legal admission by the Patent Office that the reference does not meet the recited claim features. Allowance of the claims is respectfully requested on this basis.

Kraft discloses a packaging system which uses robotics (40) for manipulating a selected container (90, 130) to transfer medication units from the container directly to a package (314). In operation, the bulk medication container (130) is manipulated by the robotics (40) to place a single medication unit in a discharge holding area (152) of the container. A helical ridge (136) acts as a ramp for pills (134) in the container (130). The container is rotated to drop the medication unit into an opening (334) in a pocket (314) of a packaging system (38) where the unit is sealingly packaged. Kraft's system uses robotics (40) to sealingly package a medication unit.

The Action alleges that Kraft discloses moving the dispenser module from a position within the enclosure to a position outside the enclosure (col. 5, lines 15-20). The referenced lines in Kraft refer to a dispenser (12) and a drawer (24). However, as the rejection is best understood, it is unclear whether the Action alleges that Kraft's drawer (24) allegedly constitutes the dispenser module.

The Action further alleges that Kraft discloses adding or removing at least one medical item from the holder while outside the enclosure (col. 13, lines 45-56). The referenced lines in Kraft refer to a scheduled medication drawer (356). However, as the rejection is best understood,

it is unclear whether the Action alleges that Kraft's drawer (24) is no longer the dispenser module, but drawer (356) now allegedly constitutes the dispenser module.

The Action further alleges that Kraft discloses moving the dispenser (sic) from outside the enclosure to within the enclosure such that the holder is within the enclosure (col. 8, lines 8-38). The referenced lines in Kraft refer to using the robotics (40) to load a container (130), and also mentions an access door (32). As the rejection is best understood, it is unclear whether the Action alleges that Kraft's dispenser module has again been switched. That is, it is unclear whether Kraft's drawer (356) is no longer asserted to be the dispenser module, but either the container (130) or the access door (32) now allegedly constitutes the dispenser module.

As can be seen, the rejection is incongruent both in substance and explanation. The rejection is an omnibus type rejection and does not permit understanding by Applicants. It remains unclear as to what element in Kraft constitutes the dispenser module. The Patent Office has not clearly presented the rejection as is required by MPEP 707.07(d). Applicants have been left with the burden of trying to properly respond to an unclear Action. As the rejection is clearly legally insufficient Applicants request that it be withdrawn.

Claim 40

Claim 40 is an independent claim which is specifically directed to a method performed in connection with a medical item dispenser. The claim specifically recites that the dispenser module "includes a holder enabling holding of medical items" and that "the dispenser module further includes a dispenser mechanism, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder." Furthermore, the claim specifically recites that the

dispenser module, while mounted, is movable “from a first position, wherein the dispenser module is within the enclosure, to a second position, wherein the holder extends outside the enclosure.”

Kraft does not disclose a dispenser module that includes a dispenser mechanism as recited. Kraft does not disclose a dispenser mechanism selectively operable to dispense medical items from the holder. Nor does Kraft disclose a mounted dispenser module including a “holder” and “a dispenser mechanism”, and the step of moving the mounted dispenser module in the manner recited.

The Action does not even mention a “dispenser mechanism.” Nor does Kraft disclose a “dispenser mechanism.” Nor does Kraft disclose a “dispenser mechanism selectively operable to dispense medical items from the holder.” Nor does Kraft disclose a movably mounted dispenser module that includes a dispenser mechanism. Anticipation pursuant to 35 U.S.C. § 102 would require that Kraft contain all the elements of the claimed invention arranged in the manner recited in the claim. Kraft does not disclose a “dispenser mechanism” in the manner recited. It follows that Kraft does not disclose the recited step of moving a dispenser module which includes a dispenser mechanism.

Kraft’s drawer (24) cannot constitute the dispenser module because it does not include a “dispenser mechanism” as specifically recited. The drawer (24) simply allows a nurse to access medication contained therein. Kraft’s scheduled medication drawer (356) likewise cannot constitute the dispenser module because it does not include a “dispenser mechanism” as recited. The scheduled medication drawer (356) simply allows a nurse to remove packages from the

drawer (356). Neither Kraft's container (130) or access door (32) can constitute the dispenser module because neither includes a "dispenser mechanism" in the manner recited. Furthermore, neither of Kraft's container (130) nor access door (32) is moved, "while mounted, from a first position, wherein the dispenser module is within the enclosure, to a second position, wherein the holder extends outside the enclosure."

Kraft does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required to sustain the rejection. As Kraft does not disclose the recited method, Applicants' claim patentably distinguishes over the Kraft reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102 rejection has been overcome. It follows that the claims which depend from claim 40 are likewise allowable.

**The Dependent Claims Recite Features Which Further
Patentably Distinguish Over Kraft**

There are also a number of features that are expressly recited in claims that depend from claim 40 that further distinguish the preferred embodiment of the present invention over the cited art.

Kraft does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required for a valid rejection. Kraft does not disclose or suggest the recited methods. Hence, Applicants' claims patentably distinguish over the Kraft reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(e) rejections have been further overcome due to recitation of additional features as discussed below.

Claim 42

Claim 42 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “manually adding or removing at least one medical item from the holder.”

As previously discussed, Kraft does not disclose a movably mounted dispenser module including a “dispenser mechanism” in the manner recited. It follows that Kraft cannot disclose “manually adding or removing at least one medical item from the holder” in combination with a “dispenser mechanism” that is “selectively operable to dispense medical items from the holder.” Further, Kraft does not disclose “manually adding or removing at least one medical item from the holder” “while the holder extends outside the enclosure.” It is respectfully submitted that claim 42 is further allowable for this reason.

The referenced col. 4, lines 35-50, is directed to personnel loading and removing containers through an access window (32). These containers do not constitute a dispenser module, nor are they moved while mounted as is specifically recited. Nor does Kraft disclose such. Thus, it is respectfully submitted that the rejection is invalid and that the claim is further allowable.

Claim 43

Claim 43 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the dispenser further includes a path extending in the enclosure, wherein the path is in connection with a delivery area, whereby medical items are accessible to a user in the delivery area, wherein the

dispenser mechanism is selectively operable to dispense medical items from the holder at a dispense location.” Kraft does not disclose such a “path” and “delivery area” and “dispense location” as recited. Nor does Kraft disclose the recited relationship of the “path” and “delivery area” and “dispense location.” Thus, it is respectfully submitted that claim 43 is further allowable on this basis.

The referenced col. 13, lines 38-57, is directed to a nurse being able to remove packages from a drawer (356). Neither the packages nor the drawer (356) constitute a dispenser module as recited. Kraft does not disclose or suggest such features. Thus, it is respectfully submitted that the claim is further allowable.

Claim 46

Claim 46 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that a “reference surface includes indicia thereon indicative of the number of medical items in the holder.” The claim further recites “reading the indicia on the reference surface.” Kraft does not disclose “indicia” on a “reference surface” as recited. Nor does Kraft disclose indicia “indicative of the number of medical items in the holder.” Thus, it is respectfully submitted that claim 46 is further allowable on this basis.

The referenced col. 9, lines 1-28 of Kraft, is directed to detection of medication units in an area. The referenced col. 7, lines 59-65, is directed to a label containing information on the type of medication stored. However, neither referenced section of Kraft is directed to reading

indicia “indicative of the number of medical items in the holder.” Nor does Kraft disclose such.

Thus, it is respectfully submitted that the claim is further allowable.

Claim 47

Claim 47 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites a cover movably mounted on the dispenser module and that “the cover is prevented from moving to the up position when the dispenser module is in the first position.” Kraft does not disclose such a “cover” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

The referenced col. 12, line 58 to col. 13, line 3, is directed to detecting whether a pill has landed in the package. The referenced section of Kraft is clearly not directed to a cover movably mounted on a dispenser module in the manner recited. Nor does Kraft disclose such. Thus, it is respectfully submitted that claim 46 is further allowable on this basis.

**The Features Recited in Applicants’ Claims
Patentably Distinguish Over Blechle**

In the Action claims 40, 42, 43, 49-51, and 60-61 were rejected under 35 U.S.C. § 102(b) as being anticipated by Blechle.

These rejections are respectfully traversed. Applicants traverse these rejections on the grounds that the Blechle reference does not contain all the elements of the claimed invention

arranged in the manner recited in the claims. The features recited in Applicants' claims patentably distinguish over the Blechle reference.

Furthermore, the Action again has not stated where the specific features of Applicants' claims are allegedly found in the Blechle reference. The Office is again respectfully asked to clearly state on the record which specific (numbered) features in the Blechle reference directly correspond the claimed dispenser, enclosure, dispenser module, holder, dispenser mechanism, and medical item. The Action's failure to specifically indicate the presence of the recited claim features in the Blechle reference constitutes Agency Action under the Administrative Procedures Act admitting that the reference does not meet the recited claim features. Allowance of the claims is respectfully requested as the Action is legally insufficient.

Claim 40

Claim 40 is an independent claim which is specifically directed to a method performed in connection with a dispenser. The claim specifically recites that the dispenser module "includes a holder enabling holding of medical items" and "a dispenser mechanism, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder." Furthermore, the claim specifically recites "moving the dispenser module, while mounted, from a first position, wherein the dispenser module is within the enclosure, to a second position, wherein the holder extends outside the enclosure."

Blechle does not disclose a dispenser module including a dispenser mechanism in the manner recited. Blechle also does not disclose a "dispenser module movably mounted in

supporting connection with an enclosure.” Blechle does not disclose moving a “mounted” dispenser module including a “holder” and “a dispenser mechanism” in the manner recited.

Blechle shows a cartridge (90) for insertion into a dispenser (60). Stacked medication containers (108) are contained in the interior storage space (102) of the cartridge (90).

Blechle does not disclose a dispenser module being mounted in the manner recited. Blechle does not disclose a “mounted” dispenser module including a “holder” and “a dispenser mechanism” in the manner recited. Blechle does not disclose moving a dispenser module, while mounted, including a “holder” and “a dispenser mechanism” in the manner recited.

Blechle states that element (60) is the dispenser. However, the Action is silent as to what feature, if any, in Blechle is asserted to correspond to the recited dispenser module. It remains unclear as to what element in Blechle is asserted to constitute the recited dispenser module. The Action alleges that Blechle discloses moving a dispenser module from a position within the enclosure to a position outside the enclosure (col. 3, line 52 to col. 4, line 2). The referenced lines in Blechle refer to a door (28) (Figure 1). However, as the rejection is best understood, it is unclear whether the Action alleges that Blechle’s door (28) constitutes the dispenser module. Nevertheless, Blechle’s drawer (28) cannot constitute the recited dispenser module because it does not include a “dispenser mechanism” as recited.

Blechle’s cartridge (90) cannot constitute the recited dispenser module because it does not include a “dispenser mechanism” in the manner recited. Furthermore, the cartridge (90) is not “movably mounted in supporting connection with an enclosure.” Additionally, the cartridge (90) does not include a “holder” and “a dispenser mechanism.” Additionally, the cartridge (90)

is not “selectively operable to dispense medical items from the holder.” Additionally, the cartridge (90) is not moved while “mounted in supporting connection with an enclosure.” Additionally, the cartridge (90) does not include a “holder” and “a dispenser mechanism” while being moved and while being “mounted in supporting connection with an enclosure.” Additionally, the cartridge (90) is not capable of being moved, “while mounted” in supporting connection with an enclosure, from a first position “within the enclosure” to a second position, wherein the holder “extends outside the enclosure.”

Blechle’s dispenser (60) cannot constitute the recited dispenser module because it does not include a “holder enabling holding of medical items” and “a dispenser mechanism” in the manner recited. Additionally, the dispenser (60) is not capable of being moved, “while mounted” in supporting connection with an enclosure, from a first position “within the enclosure” to a second position, wherein the holder “extends outside the enclosure” in the manner recited. Furthermore, Blechle’s stated dispenser (60) is limited to being a dispenser, not a dispenser module.

Blechle does not disclose a dispenser module being mounted, in the manner recited. Blechle does not disclose a dispenser module capable of moving while being mounted, in the manner recited. Blechle does not disclose a “dispenser” in the manner recited.

Blechle does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required to sustain the rejection. Blechle clearly does not disclose the recited method, and Applicants’ claim patentably distinguishes over the Blechle reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejection is not

appropriate and that claim 40 patentably distinguishes over Blechle. It follows that the claims which depend from claim 40 are likewise allowable.

**The Dependent Claims Recite Features Which Further
Patentably Distinguish Over Blechle**

There are also a number of features that are expressly recited in claims that depend from claim 40 that further distinguish the preferred embodiment of the present invention over the cited art.

Blechle does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required for a valid rejection. Blechle does not disclose the recited method, and Applicants' claims patentably distinguish over the Blechle reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejections are not appropriate for the further reasons discussed below.

Claim 42

Claim 42 depends from claim 40 and recites further features that patentably distinguish the claimed invention over the applied art. The claim specifically recites "manually adding or removing at least one medical item from the holder."

Blechle does not disclose "manually adding or removing at least one medical item from the holder" in the manner recited. Thus, it is respectfully submitted that the claim is further allowable on this basis.

Claim 43

Claim 43 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that a “door is movable between a closed position wherein the door closes the opening, and an open position wherein the door is disposed away from the opening.” The claim further recites that “when the door is in the open position the dispenser module is movable to the second position.” The Action is silent as to what feature, if any, in Blechle is asserted to correspond to the recited door. It remains unclear as to what element in Blechle constitutes the recited door. Blechle does not disclose the relationship of the “door” and the movement of the “dispenser module” as specifically recited. Thus, it is respectfully submitted that claim 43 is further allowable.

Claim 49

Claim 49 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “a further dispenser module in the interior area” and “dispensing a first medical item including a supporting card from the dispenser module” and “dispensing a second medical item including a generally cylindrical liquid holding container from the further dispenser module.” The Action is silent as to what features, if any, in Blechle are asserted to correspond to the recited supporting card and generally cylindrical liquid holding container. It remains unclear as to what elements in Blechle constitute the recited supporting card and the generally cylindrical liquid holding container. Blechle does not disclose “a further dispenser module” or dispensing “a supporting card” or

“generally cylindrical liquid holding container” in the manner recited. Thus, it is respectfully submitted that claim 49 is further allowable on this basis.

Claim 50

Claim 50 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “medical items are biased to move by gravitational force” and “providing a follower in engagement with the stack, wherein in the first position the follower provides additional biasing force on the stack.” Blechle does not disclose medical items “biased to move by gravitational force” and a “follower in engagement with the stack” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

The Action alleges that Blechle discloses engaging a follower in engagement with the stack, at col 7, line 46 to col. 8, line 13. However, the referenced col 7, line 46 to col. 8, line 13, appears directed to the medication containers (108) of Figure 10. The Action is silent as to what feature, if any, in Blechle is asserted to correspond to the recited follower. It remains unclear as to what element in Blechle constitutes the recited follower. It is respectfully asserted that Blechle does not disclose a follower that “provides additional biasing force on the stack.” It follows that Blechle does not disclose “providing a follower in engagement with the stack, wherein in the first position the follower provides additional biasing force on the stack” in the manner recited. Thus, it is respectfully submitted that claim 50 is further allowable on this basis.

Claim 51

Claim 51 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “medical items are biased to move by gravitational force” and a “movably positionable guide extending adjacent the stack” and a “generally cylindrical rotatably movable follower, including at least one annular groove, in operative engagement with the stack.” Blechle does not disclose medical items “biased to move by gravitational force” and a “movably positionable guide” and a “generally cylindrical rotatably movable follower” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

The Action alleges that Blechle discloses engaging a follower in engagement with the stack, at col 7, line 46 to col. 8, line 13. However, the referenced col 7, line 46 to col. 8, line 13, appears directed to the medication containers (108) of Figure 10. The Action is silent as to what feature, if any, in Blechle is asserted to correspond to the recited follower. It remains unclear as to what element in Blechle constitutes the recited follower. In reality Blechle does not disclose a follower that “provides additional biasing force on the stack.” It follows that Blechle does not disclose “providing a follower in engagement with the stack, wherein in the first position the follower provides additional biasing force on the stack” in the manner recited. Thus, it is respectfully submitted that claim 51 is further allowable on this basis.

Claim 60

Claim 60 depends from claim 53. In the Action, claim 53 was not asserted to be anticipated by Blechle. It follows that claim 60 is not anticipated by Blechle.

Claim 60 further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “a further dispenser module in the interior area” and “dispensing a first medical item including a supporting card from the dispenser module” and “dispensing a second medical item including a generally cylindrical liquid holding container from the further dispenser module.” The Action is silent as to what features, if any, in Blechle are asserted to correspond to the recited supporting card and generally cylindrical liquid holding container. It remains unclear as to what elements in Blechle are asserted to constitute the recited supporting card and the generally cylindrical liquid holding container. Blechle does not disclose “a further dispenser module” or dispensing “a supporting card” or “generally cylindrical liquid holding container” as recited. Thus, it is respectfully submitted that claim 60 is further allowable on this basis.

Claim 61

Claim 61 is an independent method claim. The claim specifically recites dispenser modules “in movably supporting connection with the enclosure” through guide arrangements. The guide arrangements are adapted to guide the dispenser modules “during movement.” Blechle does not disclose a “guide arrangement” capable of supporting and guiding a dispenser module during dispenser module movement, as recited. Further, Blechle does not disclose a dispenser module movable while in supporting connection with the enclosure.

The Action alleges that Blechle at col 2, lines 13-31, discloses “providing an enclosure with a delivery area accessible from outside the enclosure providing a first dispenser module within the enclosure, wherein dispenser module includes a plurality of medical items and is

selectively operative to dispense first medical items therefrom; providing a second dispenser module in the enclosure in supporting connection with the enclosure through a second support, wherein second and first supports are interchangeably engageable to support the first or second dispenser modules, and second dispenser includes a plurality of second medical items selectively operative to dispense the second medical items therefrom, wherein second medical items are dispensed from the second dispenser in the enclosure.” However, the referenced col 2, lines 13-31, is directed to a brief description of the Blechle’s invention, and does not mention any of the alleged recited features. The Action is silent as to what feature, if any, in Blechle is asserted to correspond to the recited enclosure; delivery area; first dispenser module; first guide arrangement; first medical items; second dispenser module; second guide arrangement; and second medical items. It remains unclear as to what elements in Blechle are asserted to correspond to the recited features.

Blechle clearly does not disclose or suggest dispenser modules “in movably supporting connection with the enclosure” through guide arrangements, wherein the guide arrangements are adapted to guide the dispenser modules “during movement. Blechle further does not disclose a dispenser module movable while in supporting connection with the enclosure in the manner recited. It is respectfully submitted that claim 61 is allowable for at least these reasons.

Blechle does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required to sustain the rejection. Blechle does not disclose the recited method, and Applicants’ claim patentably distinguishes over the Blechle reference. It is

respectfully submitted that the 35 U.S.C. § 102(b) rejection is not legally sustainable. It follows that the claims which depend from claim 61 are likewise allowable.

The Pending Claims Are Not Obvious in View of Higham

In the Action claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham. These rejections are respectfully traversed.

Applicants traverse these rejections on the grounds that Applicants' claims recite features which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion or motivation cited so as to produce Applicants' invention. The features recited in Applicants' claims patentably distinguish over the applied reference.

The Action admits that Higham does not disclose the step of closing the door. The Action asserts that it would have been obvious to close the door in Higham.

The Applicants disagree. Higham lacks many of the recited features. Higham does not disclose or suggest many features and relationships that are specifically recited in the claims.

Claims 40, 42, 43, and 46-47

Claims 40, 42, 43, and 46-47 have already been discussed in regards to specifically recited features not found in the Higham reference. Applicants' arguments concerning the Higham reference discussed above in support of the patentability of these claims are incorporated by reference as if fully rewritten herein.

Higham does not disclose or suggest the recited method. As nothing in the Higham reference discloses nor suggests the features and relationships that are specifically recited in the

claims, and because there is no teaching, suggestion or motivation cited in Higham for combining features of the cited reference so as to produce Applicants' invention, it is respectfully submitted that these claims are allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections are improper and should be withdrawn.

Claim 41

Claim 41 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites "moving the door of the enclosure from a closed position to an open position, wherein the holder is able to be moved outside the enclosure" and "closing the door." Higham does not disclose or suggest "moving the door" in the manner recited. Thus, it is respectfully submitted that claim 41 is further allowable on this basis.

Claim 49

Claim 49 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites "a further dispenser module in the interior area" and "dispensing a first medical item including a supporting card from the dispenser module" and "dispensing a second medical item including a generally cylindrical liquid holding container from the further dispenser module."

The Action alleges that Higham discloses dispensing a supporting card from the module (col 18, lines 1-15; Figure 3, #52). However, Higham's item (52) is a catheter. Higham does not disclose or suggest "a further dispenser module" or dispensing "a supporting card" in the manner recited. Thus, it is respectfully submitted that claim 49 is further allowable.

Higham also does not disclose or suggest dispensing a “liquid holding container.” The Action alleges that Higham shows a cylindrical holding container (260). However, there is no indication that this alleged container is a “liquid holding container” in the manner recited. Nevertheless, the container (260) is not capable of being dispensed in the manner recited. Thus, it is respectfully submitted that the claim is further allowable on this basis.

Claim 52

Claim 52 is an independent claim which is specifically directed to a method performed in connection with a medical item dispenser. The claim specifically recites that the dispenser module “includes a holder enabling holding of medical items” and “a dispenser mechanism, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder.” Furthermore, the claim specifically recites that the dispenser module, while mounted in supportive connection with the enclosure, is movable “from a first position, wherein the dispenser module is within the enclosure, to a second position, wherein the holder extends outside the enclosure.”

Higham does not disclose or suggest a dispenser module including a dispenser mechanism as recited. Higham does not disclose or suggest a dispenser mechanism selectively operable to dispense medical items from a holder. Higham further does not disclose or suggest a mounted dispenser module including a “holder” and “a dispenser mechanism”, and moving the mounted dispenser module in the manner recited.

In the operation of Higham, an item can be manually placed into or removed from a particular receptacle (36) of the withdrawn drawer (32) (col. 16, lines 37-45; col. 18, lines 43-

47). Higham does not disclose or suggest a dispenser module including a “dispenser mechanism.” The recited “dispenser mechanism” or Applicants’ claim is “selectively operable to dispense medical items from the holder.” Higham’s manual removal of items teaches away from using the recited “dispenser mechanism” to dispense medical items. Higham clearly does not disclose or suggest a “dispenser” or the method steps specifically recited.

As nothing in the Higham reference discloses nor suggests the features and relationships that are specifically recited in the claim, and because there is no teaching, suggestion or motivation cited for combining features of the cited reference so as to produce Applicants’ invention, it is respectfully submitted that the claim is allowable. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome.

Claim 53

Claim 53 is an independent claim which is specifically directed to a method performed with a medical item dispenser apparatus. The claim specifically recites that the dispenser module “includes a holder, wherein the holder enables holding the medical items” and “a dispenser mechanism, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder.” Furthermore, the claim specifically recites that the dispenser module, while mounted, is movable “from a first position, wherein the dispenser module is within the enclosure, to a second position, wherein the holder extends outside the enclosure.”

Higham does not disclose or suggest a dispenser module including a dispenser mechanism as recited. Higham does not disclose or suggest a dispenser mechanism selectively operable to dispense medical items from the holder. Higham also does not disclose nor suggest a

mounted dispenser module including a “holder” and “a dispenser mechanism”, and moving the mounted dispenser module in the manner recited.

In the operation of Higham, an item can be manually placed into or removed from a particular receptacle (36) of the withdrawn drawer (32) (col. 16, lines 37-45; col. 18, lines 43-47). Higham does not disclose or suggest a dispenser module including a “dispenser mechanism.” The “dispenser mechanism” as recited in claim 53 is “selectively operable to dispense medical items from the holder.” Higham’s manual removal of items teaches away from using the recited “dispenser mechanism” to dispense medical items. It is clear that Higham does not disclose or suggest a “dispenser” or the method steps as recited.

As nothing in the Higham reference discloses nor suggests the features and relationships that are specifically recited in the claim, and because there is no teaching, suggestion or motivation cited for combining features of the cited reference so as to produce Applicants’ invention, it is respectfully submitted that the claim is allowable. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome, and the rejection of claim 53 withdrawn.

Claim 54

Claim 54 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “manually adding or removing at least one medical item from the holder.” Higham does not disclose or suggest “manually adding or removing at least one medical item from the holder” in the manner recited. Thus, it is respectfully submitted that claim 54 is further allowable on this basis.

Claim 57

Claim 57 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that a “reference surface includes indicia thereon indicative of number of medical items in the holder.” The claim further recites “reading the indicia on the reference surface.” Higham does not disclose or suggest “indicia” on a “reference surface” in the manner recited. Nor does Higham disclose or suggest indicia “indicative of numbers of medical items in the holder.” Thus, it is respectfully submitted that the claim is further allowable on this basis.

The Action alleges that Higham discloses reading indicia on a reference surface at col 5, lines 3-18. However, the referenced col 5, lines 3-18, appears directed to displaying types of items held by a unit. Higham does not disclose reading indicia on a reference surface. Higham does not disclose “indicia” nor that a “reference surface includes indicia thereon” as specifically recited. Nor does Higham disclose reading indicia “indicative of numbers of medical items in the holder.” Thus, it is respectfully submitted that claim 57 is further allowable on this basis.

Claim 58

Claim 58 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the cover is prevented from moving to the up position when the dispenser module is in the first position.” Higham does not disclose or suggest a “cover” in the manner recited. Thus, it is respectfully submitted that claim 58 is further allowable for this reason.

Claim 60

Claim 60 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “a further dispenser module in the interior area” and “dispensing a first medical item including a supporting card from the dispenser module” and “dispensing a second medical item including a generally cylindrical liquid holding container from the further dispenser module.”

The Action alleges that Higham discloses dispensing a supporting card from the module (col 18, lines 1-15; Figure 3, #52). However, Higham’s item (52) is a catheter. Higham does not disclose or suggest “a further dispenser module” or dispensing “a supporting card” in the manner recited. Thus, it is respectfully submitted that claim 60 is further allowable.

Higham also does not disclose or suggest dispensing a “liquid holding container.” The Action alleges that Higham shows a cylindrical holding container (260). However, there is no indication that this alleged container is a “liquid holding container” in the manner recited. Nevertheless, the container (260) is not capable of being dispensed in the manner recited. Thus, it is respectfully submitted that claim 60 is further allowable on this basis.

Claim 62

Claim 62 depends from claim 61. In the Action, claim 61 was not rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham. It follows that claim 62 is not unpatentable over Higham.

Claim 62 further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “dispensing a first medical item including a supporting card from the first dispenser module.”

As previously discussed, Higham does not disclose or suggest dispensing a supporting card from a dispenser module. The Action alleges that Higham discloses dispensing a supporting card from the module (col 18, lines 1-15; Figure 3, #52). However, Higham’s item (52) is a catheter. Higham does not disclose or suggest “a second dispenser module” or dispensing “a supporting card” in the manner recited. Thus, it is respectfully submitted that the claim is further allowable.

Higham also does not disclose or suggest dispensing a “liquid holding container.” The Action alleges that Higham shows a cylindrical holding container (260). However, there is no indication that this alleged container is a “liquid holding container” in the manner recited. Nevertheless, the container (260) is not capable of being dispensed in the manner recited. Thus, it is respectfully submitted that claim 62 is further allowable on this basis.

**The Pending Claims Are Not Obvious Over
Higham in view of Kraft**

In the Action claims 40-44, 46-49, 52-60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham in view of Kraft. These rejections are respectfully traversed.

Applicants traverse these rejections on the grounds that Applicants’ claims recite features which are neither disclosed nor suggested in the prior art, and because there is no teaching,

suggestion or motivation cited so as to produce Applicants' invention. The features recited in Applicants' claims patentably distinguish over the applied references.

The Office Action admits that Higham does not disclose "engaging a helix within the holder a rotating mechanism"; "engaging a holder guide"; "placing a medical item in engagement with each of a pair of helices"; and "extending a limiting member within the inside of the helix." The Office Action asserts that Kraft discloses such features. The Office Action further asserts that it would have been obvious for Higham to have such features.

The Applicants disagree. Higham lacks many of the features and relationships that are specifically recited in the claims. Kraft lacks the capability of adding the recited features that are not found in Higham. Neither Higham nor Kraft alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims.

As nothing in the cited references disclose nor suggest the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicants' claimed invention, it is respectfully submitted that these claims are allowable. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections should be withdrawn.

Claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62

Applicants' arguments concerning the Higham reference discussed above in support of the patentability of claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62 are incorporated by reference as if fully rewritten herein. Kraft does not disclose or suggest the features or relationships that are not found in Higham.

As previously discussed, in the operation of Higham, an item can be manually placed into or removed from a particular receptacle (36) of a withdrawn drawer (32) (col. 16, lines 37-45; col. 18, lines 43-47). Higham does not disclose or suggest a dispenser module including a “dispenser mechanism.” The recited “dispenser mechanism” of Applicants’ claim is “selectively operable to dispense medical items from the holder.” Higham’s manual removal of items teaches away from using the recited “dispenser mechanism” to dispense medical items.

Kraft’s packaging system uses robotics (40) for manipulating a selected container (90, 130) to transfer medication units from the container directly to a package (314). In operation, the bulk medication container (130) is manipulated by the robotics (40) to place a single medication unit in a discharge holding area (152) of the container. A helical ridge (136) acts as a ramp for pills (134) in the container (130). The container is rotated to drop the medication unit into an opening (334) in a pocket (314) of a packaging system (38) where the unit is sealingly packaged.

Kraft’s system uses robotics (40) to package a medication unit in a sealed condition. In Higham an item is manually placed or removed from a drawer. Therefore, it would not have been obvious to modify Higham as alleged.

The Action is silent as to what feature, if any, in Kraft constitutes the alleged helix. It is unclear whether Kraft’s helical ridge (136) is the alleged helix. Nevertheless, Kraft’s helical ridge (136) acts as a ramp for pills (134) in the container (130). The container is rotated to drop the medication unit into an opening (334) in a pocket (314) of a packaging system (38). Hence, the helical ridge (136) is used in the packaging of medication. In Higham a medical item is not capable of being dropped to a lower location. In Higham’s operation a drawer is opened and an

item is manually removed. In Higham there is no dispenser mechanism because the items are manually removed from the drawer. Hence, Higham has no need, desire or use for the recited helix. There can be no suggestion or motivation derived from the teachings of Higham to include such a helix therein.

Furthermore, the robotic packaging system of Kraft is contrary to the manual drawer system of Higham. The assertion in the Action concerning incorporation of a helix into Higham is clearly an attempt at hindsight reconstruction of Applicants' claimed invention, which is impermissible. The Action has not shown any reason or motivation to combine, or explained how a helix could be incorporated into the manually operated drawer system of Higham. The Action has not shown any reason or motivation why one skilled in the art would attempt to incorporate a helix into the manually operated drawer system of Higham. When a drawer of Higham is opened, then the items are readily accessible. A helix, even if it were somehow possible to install in Higham, would serve no purpose. Thus, Higham would not be improved with the addition of a helix. Clearly, one skilled in the art would have no reason to have attempted to incorporate a helix into the manually operated drawer system of Higham. Any alleged modification involving a helix, if it were even somehow possible, would appear to destroy the utility or advantage of Higham and render the disclosed device of Higham inoperable.

A reference teaching away from the recited invention does not support prima facie obviousness. It is improper to reconstruct the invention from the disclosure of the Applicants. An obviousness rejection cannot be based on a combination of features in references if making the combination would result in destroying the utility or advantage of the device shown in the

prior art references. *In re Fine* 5 USPQ2d 1598-99 (Fed. Cir. 1988). As the combination of features asserted in the Action would destroy the utility and advantages of the cited references, it is respectfully submitted that the rejection is improper and should be withdrawn.

In regard to claims 52 and 53 Higham additionally lacks the recited path and delivery area. The arrangement of Higham's drawer system cannot support the features and relationships of a path and a delivery area. Therefore, even if Kraft disclosed these features and relationships, it would not have been obvious to have included these features and relationships into Higham.

Neither Higham nor Kraft alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims. Neither Higham nor Kraft alone or in combination disclose or suggest the recited method.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in the claim, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicants' invention, it is respectfully submitted that claims 40-43, 46-47, 49, 52-54, 57-58, 60 and 62 are allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome. It follows that the claims which depend from these claims are likewise allowable.

Applicants further wish to point out further features recited in dependent claims that further patentably distinguish the exemplary embodiment of the invention.

Claim 44

Claim 44 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “the holder includes the helix.” The claim further recites “engaging a holder guide in operative connection with the dispenser module, wherein a first portion of the holder guide is extended in an inside area within the helix and a second portion of the holder guide extends in an exterior area outside of the helix.” Neither Higham nor Kraft alone or in combination disclose or suggest that a “holder includes the helix” and a “holder guide” in the manner recited. Neither Higham nor Kraft alone or in combination disclose or suggest the recited method.

The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “helix” and “holder guide.” Nor does Kraft disclose such features in the manner recited. Nor would it have been obvious to have included Higham with such features. Thus, it is respectfully submitted that claim 44 is further allowable.

Claim 48

Claim 48 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the holder includes a rotatable helix.” The claim further recites “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix.” Neither Higham nor Kraft alone or in combination disclose or suggest a “rotatable helix” and a “limiting member” in

the manner recited. Neither Higham nor Kraft alone or in combination disclose or suggest the recited method.

The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “rotatable helix” and “limiting member.” Nor does Kraft disclose such features in the manner recited. Nor would it have been obvious to have included such features in Higham. Thus, it is respectfully submitted that claim 48 is further allowable on this basis.

Claim 55

Claim 55 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “the holder includes the helix.” The claim further recites “engaging a holder guide in operative connection with the dispenser module, wherein a first portion of the holder guide is extended in an inside area within the helix and a second portion of the holder guide extends in an exterior area outside of the helix.” Neither Higham nor Kraft alone or in combination disclose or suggest that a “holder includes the helix” and a “holder guide” in the manner recited. Neither Higham nor Kraft alone or in combination disclose or suggest the recited method.

The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “helix” and “holder guide.” Nor does Kraft disclose such features in the manner recited. Nor would it have been obvious to have included Higham with such features. Thus, it is respectfully submitted that claim 55 is further allowable on this basis.

Claim 56

Claim 56 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “the holder includes a pair of rotatable helixes.” Neither Higham nor Kraft alone or in combination disclose or suggest that a “holder includes a pair of rotatable helixes” in the manner recited. Neither Higham nor Kraft alone or in combination disclose or suggest the recited method.

The Action cites to Kraft at col. 5, lines 21-37; col. 7, lines 26-38; and col. 8, lines 25-67. However, these referenced sections of Kraft lacks the recited “pair of rotatable helixes.” Nor does Kraft disclose such features in the manner recited in the claim. Nor would it have been obvious to have included such features with the method of operation of Higham. Thus, it is respectfully submitted that claim 56 is further allowable.

Claim 59

Claim 59 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the holder includes a rotatable helix.” The claim further recites “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix.” Neither Higham nor Kraft alone or in combination disclose or suggest a “rotatable helix” and a “limiting member” in the manner recited. Neither Higham nor Kraft alone or in combination disclose or suggest the recited method.

The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “rotatable helix” and “limiting member.” Nor does Kraft disclose such features in the manner recited. Nor would it have been obvious to have included such features in Higham. Thus, it is respectfully submitted that claim 59 is further allowable on this basis.

**The Pending Claims Are Not Obvious Over
Kraft in view of Pitel**

In the Action claims 40-49, 52-60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kraft in view of Pitel. These rejections are respectfully traversed.

Applicants traverse these rejections on the grounds that Applicants’ claims recite features which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion or motivation cited so as to produce Applicants’ invention. The features recited in Applicants’ claims patentably distinguish over the applied references.

The Pitel Reference

The reference to Pitel is directed to a helical feed merchandising machine. The machine (10) includes a cabinet (12) having sides (14, 16) and a door (20). Each delivery tray or shelf (36, 38, 40, 42) includes plural delivery units (44). Each of the units (44) includes a pair of helixes (106, 108). Each tray includes a base (56), back panel (58), and sides (60, 62) with mounted rollers (64, 66, 68, 70). Each cabinet side (14, 16) has rails (50, 52) for receiving the rollers. The tray (36) is mounted for rolling movement inward and outward of the cabinet.

When the shelf has been rolled outward, and the rear rollers (70) are aligned with slots (78) in the upper rails (50), then the tray can be pivoted downward until the back panel (58) engages stop pins (80) (Figure 3). In this position the tray can be loaded.

Neither Kraft Nor Patel Disclose or Suggest the Recited Method

The Action alleges that Kraft discloses moving the dispenser module from a position within the enclosure to a position outside the enclosure (col. 5, lines 15-20); adding or removing at least one medical item from the holder while outside the enclosure (col. 13, lines 45-56); moving the dispenser from outside the enclosure to within the enclosure such that the holder is within the enclosure (col. 8, lines 8-38); manually adding or removing at least one medical item from the holder (col. 4, lines 35-50); moving the dispenser out of the enclosure so as to make it manually accessible (col. 13, lines 38-57); reading indicia on a reference surface (co. 9. lines 1-28; col. 7, lines 59-65); and moving the cover to the up position prior to moving the cover to the down position (col. 12, line 58 to col. 13, line 3). The Action further alleges that Kraft discloses placing a dispensate medical item in engagement with each of a helix.

The Action admits that Kraft does not disclose “placing a dispensate item in contact with a pair of helixes.” The Action alleges that Pitel discloses placing a dispensate item in contact with a pair of helixes. The Action further alleges that it would have been obvious for Kraft to place the dispensate in contact with a second helix because dual helixes are more reliable and more flexible in the size and width of dispensed products than are single helix dispensers.

The Applicants disagree. Kraft does not disclose or suggest many of the features and relationships that are specifically recited in the claims. Pitel does not overcome the deficiencies of Kraft as Pitel does not disclose or suggest the recited features which are not found in Kraft. Further, neither Kraft nor Pitel alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims. Neither Kraft nor Pitel alone or in combination disclose the recited method steps.

As nothing in the cited references disclose nor suggest the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicants' invention, it is respectfully submitted that these claims are allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections should be withdrawn.

Kraft's packaging system uses robotics (40) for manipulating a selected container (90, 130) to transfer medication units from the container directly to a package (314). In operation, the bulk medication container (130) is manipulated by the robotics (40) to place a single medication unit in a discharge holding area (152) of the container. A helical ridge (136) acts as a ramp for pills (134) in the container (130). The container is rotated to drop the medication unit into an opening (334) in a pocket (314) of a packaging system (38) where the unit is placed in a sealed package. Kraft's system uses robotics (40) to place a medication unit in a sealed package.

The Action is silent as to what feature, if any, in Kraft constitutes the alleged helix. It is unclear whether Kraft's helical ridge (136) is the alleged helix. Nevertheless, Kraft's helical ridge (136) acts as a ramp for pills (134) in the container (130). The container is rotated by

robotics (40) to move a pill along the helical ridge (136) to drop the pill into an opening (334) of a pocket (314) of a packaging system (38). Hence, the helical ridge (136) is used in the packaging of medication.

It is not reasonable, nor has the Action explained, how Kraft could be modified to include Pitel's dual helixes as alleged. Kraft desires (col. 8, lines 8-10) to place a single pill (134) in the area (152) of a discharging element (146). The container (130) is rotated so that the pill travels along the helical ridge (136) to the area. It is unexplained how another helical ridge would be arranged in the container as alleged or any benefit therefrom. Nor is it clear how a small pill could even contact dual helical ridges as alleged. Even if it were somehow possible to arrange another helical ridge in the container, it would still be unclear how dual helical ridges would be somehow "more reliable and more flexible in the size and width" for a single pill.

Kraft desires that a single pill travel along the helical ridge (136). Therefore, it is unclear how an additional helical ridge would contribute to the travel of a single pill. Realistically, it would appear that the addition of another helical ridge would interfere with the operation of Kraft's desired pill movement. Any modification of Kraft's single helical ridge arrangement, if it were even somehow possible, would destroy the utility or advantage of Kraft and render the disclosed device of Kraft inoperable. An obviousness rejection cannot be based on a combination of features in references if making the combination would result in destroying the utility or advantage of the device shown in the prior art reference. *In re Fine* 5 USPQ2d 1598-99 (Fed. Cir. 1988).

The Action has admitted (paragraph number 11) that Pitel does not disclose that the item removed and placed within Pitel's dispenser is a medical item. It is specifically stated, Pitel's machine is specifically designed and sized to dispense large articles such as "bagged snacks" (col. 1, lines 13-15; and col. 2, lines 64-66). As is well known, "bagged snacks" such as chips and pretzels are a common vending machine product. A common bag of chips is far removed from the specifically recited "medical item" dispensed through Applicants' method. The Applicants respectfully assert that the dispensing of medical items is in a totally different field of art than that of vending bagged snacks. Pitel is non-analogous art.

Furthermore, a helix arrangement in a dispensing machine is specifically designed and sized for the specific product to be dispensed. Pitel requires the use of a pair of large helices (106, 108) for holding and dispensing the "bagged snacks." These helices are clearly too large for Kraft's small-sized single pill. One having ordinary skill in the art would not have found it obvious to add to Kraft a helix as shown by Pitel to move the desired single pill.

Kraft desires that a small-sized single pill travel along the helical ridge (136). Pitel is directed to moving large sized bagged snacks. Pitel uses a supporting bar (128) upon which rest the bagged snacks moved by the helices. Such an arrangement could not be used in Kraft because the small-sized pill would remain resting on the support bar (128) and not be moved. In other words, Kraft's small-sized pill would not make contact the Pitel's helix. One having ordinary skill in the art would not have found it obvious to add to the structure of Kraft dual helices as shown by Pitel to move the desired single pill. Such a structure would not operate to perform Kraft's purpose.

Any attempt to incorporate dual helixes into Kraft is clearly an attempt at hindsight reconstruction of Applicants' claimed invention, which is legally impermissible. Furthermore, the Action has not shown any reason or motivation in the art to combine, or explained how, dual helixes could be incorporated into the arrangement of Kraft. Furthermore, the Action has not shown any reason or motivation why one skilled in the art would attempt to incorporate dual helixes into the arrangement of Kraft. Dual helixes, even if they were somehow possible to install in Kraft, would serve no useful purpose. Thus, Kraft would not be improved with the addition of dual helixes. Clearly, one skilled in the art would not have any reason to even attempt to incorporate dual helixes into the system of Kraft.

It is respectfully asserted that the rejection based on the asserted combination of features in Kraft and Patel is legally improper, and should be withdrawn.

A detailed discussion of features in each claim is now provided, further explaining why Applicants' claimed methods are neither disclosed nor suggested by features in Kraft or Patel. Applicants' arguments concerning the Kraft reference discussed above in support of the patentability of claims 40, 42, 43, and 46-47 are incorporated by reference as if fully rewritten herein.

Claim 40

Pitel lacks the capability of adding the recited features that are not found in Kraft. Neither Kraft nor Pitel alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims.

Neither Kraft nor Pitel alone or in combination disclose or suggest that a “dispenser module further includes a dispenser mechanism, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder” nor that the dispenser module, while mounted, is movable “from a first position, wherein the dispenser module is within the enclosure, to a second position, wherein the holder extends outside the enclosure.” Neither Kraft nor Pitel alone or in combination disclose the recited method.

As admitted by the Office, Pitel is not associated with a medical item. Pitel does not overcome the deficiencies of Kraft as Pitel does not disclose or suggest the recited features which are not found in Kraft.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in the claim, and because there is no teaching, suggestion or motivation cited for combining features so as to produce Applicants’ invention, it is respectfully submitted that claim 40 is allowable. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome. It further follows that the claims which depend from claim 40 are likewise allowable.

Claim 41

Claim 41 depends from claim 40 and recites further features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest “moving the door of the enclosure from a closed position to an open position, wherein the holder is able to be moved outside the enclosure” and “closing the door” in the

manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method.

Thus, it is respectfully submitted that claim 41 is further allowable.

Claim 42

Claim 42 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest “manually adding or removing at least one medical item from the holder” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that claim 42 is further allowable.

Claim 43

Claim 43 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest that “the dispenser further includes a path extending in the enclosure, wherein the path is in connection with a delivery area, whereby medical items are accessible to a user in the delivery area, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder at a dispense location” as recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that claim 43 is further allowable for these reasons.

Claim 44

Claim 44 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest that “the holder includes the helix” or “engaging a holder guide in operative

connection with the dispenser module, wherein a first portion of the holder guide is extended in an inside area within the helix and a second portion of the holder guide extends in an exterior area outside of the helix” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that claim 44 is further allowable.

Claim 45

Claim 45 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest “placing a medical item in engagement with each of the helixes in the pair” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that the claim is further allowable.

Claim 46

Claim 46 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest that a “reference surface includes indicia thereon indicative of the number of medical items in the holder” or the step of “reading the indicia on the reference surface” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that claim 45 is further allowable on this basis.

Claim 47

Claim 47 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest a cover movably mounted on a dispenser module, and that “the cover is

prevented from moving to the up position when the dispenser module is in the first position” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that the claim is further allowable.

Claim 48

Claim 48 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination, disclose or suggest that “the holder includes a rotatable helix” or “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that claim 48 is further allowable on this basis.

Claim 49

Claim 49 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel either alone or in combination, disclose or suggest “a further dispenser module in the interior area” and “dispensing a first medical item including a supporting card from the dispenser module” and “dispensing a second medical item including a generally cylindrical liquid holding container from the further dispenser module” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that the claim is further allowable.

Claim 52

Claim 52 is an independent claim. Claim 52 is specifically directed to a method performed in connection with a medical item dispenser. Neither Kraft nor Pitel alone or in combination disclose or suggest that a dispenser module “includes a holder enabling holding of medical items” and “a dispenser mechanism is selectively operable to dispense medical items from the holder” and “adding or removing at least one medical item from the holder” in the manner recited. Neither Kraft nor Pitel, alone or in combination, disclose the recited method.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in claim 52, and because there is no teaching, suggestion or motivation cited for combining features so as to produce Applicants’ invention, it is respectfully submitted that claim 52 is allowable. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection should be withdrawn.

Claim 53

Claim 53 is an independent claim which is specifically directed to a method performed in connection with a medical item dispenser apparatus. Neither Kraft nor Pitel alone or in combination, disclose or suggest that a dispenser module includes a holder enabling “holding of medical items” and that “a dispenser mechanism is selectively operable to dispense medical items from the holder” and “adding or removing at least one medical item from the holder” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in the claim, and because there is no teaching, suggestion or motivation cited

for combining features so as to produce Applicants' invention, it is respectfully submitted that claim 53 is allowable. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome and that the claims which depend from claim 53 are likewise allowable.

Claim 54

Claim 54 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest "manually adding or removing at least one medical item from the holder" in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that claim 54 is further allowable on this basis.

Claim 55

Claim 55 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest that "the holder includes the helix" or "engaging a holder guide in operative connection with the dispenser module, wherein a first portion of the holder guide is extended in an inside area within the helix and a second portion of the holder guide extends in an exterior area outside of the helix" in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that claim 55 is further allowable on this basis.

Claim 56

Claim 56 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest that “the holder includes a pair of rotatable helixes” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that the claim is further allowable.

Claim 57

Claim 57 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest that a “reference surface includes indicia thereon indicative of number of medical items in the holder” or “reading the indicia on the reference surface” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that the claim is further allowable.

Claim 58

Claim 58 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest that a “cover is prevented from moving to the up position when the dispenser module is in the first position” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that claim 58 is further allowable.

Claim 59

Claim 59 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest that “the holder includes a rotatable helix” or “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that the claim is further allowable.

Claim 60

Claim 60 further recites features that patentably distinguish the claimed invention over the applied art. Neither Kraft nor Pitel alone or in combination disclose or suggest “a further dispenser module in the interior area” and “dispensing a first medical item including a supporting card from the dispenser module” and “dispensing a second medical item including a generally cylindrical liquid holding container from the further dispenser module” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that the claim is further allowable.

Claim 62

Claim 62 depends from claim 61. In the Action, claim 61 was not asserted to be anticipated by Kraft or Pitel, nor rejected as unpatentable over Kraft in view of Pitel. The lack of a rejection of claim 61 by either Kraft or Pitel, either alone or in combination, it must be legally inferred that claim 61 is allowable over either Kraft or Pitel, either alone or in combination. It

follows that claim 62, which depends on claim 61, is also allowable over either Kraft or Pitel alone or in combination.

Nevertheless, Applicants wish to mention neither Kraft nor Pitel alone or in combination disclose or suggest “dispensing a first medical item including a supporting card from the first dispenser module” or “dispensing a second medical item including a generally cylindrical liquid holding container from the second dispenser module” in the manner recited. Neither Kraft nor Pitel alone or in combination disclose the recited method. Thus, it is respectfully submitted that claim 62 is further allowable for these reasons.

The Pending Claims Are Not Obvious in View of Pitel

In the Action claims 40, 43, 45, 52, 53, and 56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pitel. These rejections are respectfully traversed.

Applicants traverse these rejections on the grounds that Applicants’ claims recite features which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion or motivation cited so as to produce Applicants’ invention. The features recited in Applicants’ claims patentably distinguish over the applied reference.

The Action admits that Pitel does not disclose that the item removed and placed within the dispenser is a medical item. The Action states that “The examiner takes official notice that the dispensing of medicaments such as aspirin and antacids is well known in the vending arts. It would have been obvious for Pitel et al. to place a medicament within the helical dispensing tray because aspirin is a saleable and vendible product and its distribution is a service to consumers.”

The Applicants disagree. Pitel lacks many of the recited features. Pitel does not disclose or suggest the features and relationships that are specifically recited in the claims.

Applicants challenge the rationale that “the dispensing of medicaments such as aspirin and antacids is well known in the vending arts” and that “aspirin is a saleable and vendible product.” Applicants demand evidence. Compliance by the Office with MPEP 2144.03 is requested. Applicants also wish to point out that the instant application claims priority to April 30, 1997 and the required showing must predate Applicants' priority date. In accordance with MPEP 2144.03, any “official notice” reference added as evidence of the assertion is limited to proof of the "well known" statement in the Action, and the Patent Office cannot rely on any other teachings in the reference. Therefore, any added reference is limited to a specific showing of vending aspirin or antacids. No other showing of a medical item is permitted.

The rejected claims 40, 43, 45, 52, 53, and 56 all require the handling of “at least one medical item.” The Action has admitted that Pitel does not disclose that the item removed and placed within Pitel’s dispenser is a medical item. A closer reading of Pitel indicates that Pitel’s machine is specifically designed and sized to dispense articles such as “bagged snacks” (col. 1, lines 13-15; and col. 2, lines 64-66). As is well known, “bagged snacks” such as chips and pretzels are a common vending machine product. A common bag of chips is far removed from the specifically recited “medical item.” A common bag of chips is also far removed from the asserted “official notice” articles of aspirin and antacids. The Applicants assert that the dispensing of medical items is in a totally different field of art than that of vending bagged snacks. Pitel is non-analogous art.

Furthermore, a helix arrangement in a dispensing machine is specifically designed and sized for the specific product to be dispensed. Pitel requires the use of a pair of large helices (106, 108) for holding and dispensing the “bagged snacks.” The requirement of dual large helices in Pitel indicates that Pitel’s “bagged snacks” are rather large. Even if it were somehow possible to dispense aspirin as alleged, the packaging required for one or two aspirin would be rather small in comparison to Pitel’s “bagged snacks.” Thus, it is respectfully submitted that packaged aspirin would not properly fit into Pitel’s dual large helices. That is, one having ordinary skill in the art would recognize that a small packaged aspirin would not be capable of being held and dispensed by Pitel’s dual large helices.

Pitel’s dual helix dispenser arrangement, as shown in Figure 2, is not capable of holding and dispensing aspirin as alleged. Nor would it have been obvious to one having ordinary skill in the art to even attempt to dispense aspirin using Pitel’s dispenser. Pitel’s dual helix dispenser arrangement is limited to dispensing “bagged snacks.” Any other use of the dispenser of Pitel would require a major change in the structure of the disclosed dual helix dispenser arrangement. Any modification of Pitel’s dual helix arrangement, if it were even somehow possible, would destroy the utility or advantage of Pitel and render the disclosed device of Pitel inoperable.

A reference teaching away from the recited invention does not support prima facie obviousness. It is improper to reconstruct a claimed invention from the disclosure of the Applicants. An obviousness rejection cannot be based on a combination of features in references if making the combination would result in destroying the utility or advantage of the device shown in the prior art reference. *In re Fine* 5 USPQ2d 1598-99 (Fed. Cir. 1988). As the combination of

features asserted in the Action would destroy the utility and advantages of the cited Pitel reference, it is respectfully submitted that the rejection is improper and should be withdrawn.

Pitel does not disclose or suggest the recited method. As nothing in the Pitel reference discloses nor suggests the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited reference with any other actual prior art, so as to produce Applicants' invention, it is respectfully submitted that claims 40, 43, 45, 52-53 and 56 are allowable. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections have been overcome.

Each of the claims subject to this rejection will now be discussed individually.

Claim 40

Claim 40 is an independent claim which is specifically directed to a method performed in connection with a dispenser. The claim specifically recites that the dispenser module "includes a holder enabling holding of medical items" and "a dispenser mechanism, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder." Furthermore, the claim specifically recites "adding or removing at least one medical item from the holder."

Pitel does not disclose a dispenser module including a dispenser mechanism in the manner recited. Pitel does not disclose a dispenser mechanism selectively operable to dispense medical items from the holder. As admitted by the Office, Pitel does not disclose a medical item. As previously stated, Pitel's dual helix dispenser arrangement is limited to dispensing "bagged snacks." It clearly would not have been obvious to have placed aspirin in the dual helix arrangement of Pitel for the dispensing thereof.

Pitel does not disclose or suggest the recited method. As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in the claim, and because there is no teaching, suggestion or motivation cited for combining features so as to produce Applicants' invention, it is respectfully submitted that claim 40 is allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome. It follows that the claims which depend from claim 40 are likewise allowable.

Claim 43

Claim 43 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that "the dispenser further includes a path extending in the enclosure, wherein the path is in connection with a delivery area, whereby medical items are accessible to a user in the delivery area, wherein the dispenser mechanism is selectively operable to dispense medical items from the holder at a dispense location." As admitted by the Office, Pitel does not disclose a medical item. Also, Pitel does not disclose a "path" and "delivery area" and "dispense location" in the manner recited. Nor does Pitel disclose the recited relationship of the "path" and "delivery area" and "dispense location." Nor is there any teaching, suggestion, or motivation cited for combining features so as to produce Applicants' invention. Pitel does not disclose or suggest the recited method. Thus, it is respectfully submitted that the claim is further allowable.

Claim 45

Claim 45 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites "placing a medical item

in engagement with each of the helixes in the pair.” As admitted by the Office, Pitel does not disclose a medical item. It follows that Pitel does not disclose “placing a medical item in engagement with each of the helixes in the pair” in the manner recited. Nor is there any teaching, suggestion, or motivation cited for combining features so as to produce Applicants’ invention. Pitel does not disclose or suggest the recited method. Thus, it is respectfully submitted that claim 45 is further allowable.

Claim 52

Claim 52 is an independent claim. Claim 52 is specifically directed to a method performed in connection with a medical item dispenser. The claim specifically recites that the dispenser module “includes a holder enabling holding of medical items” and “a dispenser mechanism is selectively operable to dispense medical items from the holder.” Furthermore, claim 52 specifically recites “adding or removing at least one medical item from the holder.”

Pitel does not disclose a dispenser module including a dispenser mechanism as recited. Pitel does not disclose a dispenser mechanism selectively operable to dispense medical items from a holder. As admitted by the Office, Pitel does not disclose a medical item. As previously stated, Pitel’s dual helix dispenser arrangement is limited to dispensing “bagged snacks.” It would not have been obvious to have placed aspirin or indeed any medical item, in the dual helix arrangement of Pitel for the dispensing thereof. No evidence has been cited to support the assertion in the Action that there is any suggestion or teaching in the prior art to utilize features of Pitel in dispensing medical items.

Pitel does not disclose or suggest the recited method. As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in the claim, and because there is no teaching, suggestion or motivation cited for combining features so as to produce Applicants' invention, it is respectfully submitted that claim 52 is allowable. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome.

Claim 53

Claim 53 is an independent claim. Claim 53 is directed to a method performed in connection with a medical item dispenser apparatus. The claim specifically recites that the dispenser module includes a holder enabling "holding of medical items" and that "a dispenser mechanism is selectively operable to dispense medical items from the holder." Furthermore, the claim specifically recites "adding or removing at least one medical item from the holder."

Pitel does not disclose a dispenser module including a dispenser mechanism in the manner recited. Pitel does not disclose a dispenser mechanism selectively operable to dispense medical items from the holder. As admitted by the Office, Pitel does not disclose a medical item. As previously stated, Pitel's dual helix dispenser arrangement is limited to dispensing "bagged snacks." It would not have been obvious to have placed any medical item in the dual helix arrangement of Pitel for the dispensing thereof.

Pitel does not disclose or suggest the recited method. As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in the claim, and because there is no teaching, suggestion or motivation cited for combining features so as to produce Applicants' invention, it is respectfully submitted that claim 53 is allowable. Therefore, it is

respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome. It follows that the claims which depend from claim 53 are likewise allowable.

Claim 56

Claim 56 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “placing a medical item in engagement with each of the helixes in the pair.” As admitted by the Office, Pitel does not disclose a medical item. It follows that Pitel does not disclose “placing a medical item in engagement with each of the helixes in the pair” in the manner recited. Nor is there any teaching, suggestion, or motivation cited for combining features so as to produce Applicants’ invention. Pitel does not disclose or suggest the recited method. Thus, it is respectfully submitted that claim 56 is further allowable on this basis.

**The Pending Claims Are Not Obvious Over
Blechle in view of Kraft**

In the Action claims 40, 42-44, 46, 48-51, 55, and 59-62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Blechle in view of Kraft. These rejections are respectfully traversed.

Applicants traverse these rejections on the grounds that Applicants’ claims recite features which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion or motivation cited so as to produce Applicants’ invention. The features recited in Applicants’ claims patentably distinguish over the applied references.

The Office Action admits that Blechle does not disclose “engaging a helix within the holder a rotating mechanism”; “engaging a holder guide”; “placing a medical item in engagement with each of a pair of helixes”; and “extending a limiting member within the inside of the helix.” The Office Action asserts that Kraft discloses such features. The Office Action further asserts that it would have been obvious for Blechle to have such features.

The Applicants disagree. Blechle does not disclose or suggest the features and relationships that are specifically recited in the claims. Kraft lacks the capability of adding the recited features that are not found in Blechle. Neither Blechle nor Kraft alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims. Neither Blechle nor Kraft alone or in combination disclose or suggest the recited method.

As nothing in the cited references disclose nor suggest the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicants’ invention, it is respectfully submitted that these claims are allowable. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections have been overcome.

Claims 40, 42-43, 49-51, and 60-61

Applicants’ arguments concerning the Blechle reference discussed above in support of the patentability of claims 40, 42-43, 49-51, and 60-61 are incorporated by reference as if fully rewritten herein. Applicants’ arguments concerning the Kraft reference discussed above in support of the patentability of claims 40, 42-43, 45-47, 52-53, and 56 are incorporated by

reference as if fully rewritten herein. Kraft does not disclose or suggest the features or relationships that are not found in Blechle.

As previously discussed, Blechle shows a cartridge (90) for insertion into a dispenser (60). Stacked medication containers (108) are contained in the interior storage space (102) of the cartridge (90). Upon actuation of the solenoid (68), the stepped portion (84) urges the medication container (108) resting on the dispensing platform (86) out the aperture (88) where gravity induces it to fall to the drawer (28).

As previously discussed, Blechle does not disclose a dispenser module being mounted in the manner recited. Blechle also does not disclose a “mounted” dispenser module including a “holder” and “a dispenser mechanism” in the manner recited. Blechle does not disclose moving a dispenser module, while mounted, including a “holder” and “a dispenser mechanism” in the manner recited. Kraft does not disclose or suggest the features or relationships that are not found in Blechle.

Kraft’s packaging system uses robotics (40) for manipulating a selected container (90, 130) to transfer medication units from the container directly to a package (314). In operation, the bulk medication container (130) is manipulated by the robotics (40) to place a single medication unit in a discharge holding area (152) of the container. The Action is silent as to what feature, if any, in Kraft constitutes the alleged helix. It is unclear whether Kraft’s helical ridge (136) is the alleged helix. Nevertheless, Kraft’s helical ridge (136) acts as a ramp for pills (134) in the container (130). The container is rotated to drop the medication unit into an opening (334) in a pocket (314) of a packaging system (38) where the unit is sealingly packaged.

Furthermore, the robotic packaging system of Kraft to sealingly package a medication unit, is contrary to the system of Blechle. Any attempt to incorporate a helix into the structure of Blechle is clearly hindsight reconstruction of Applicants' claimed invention, which is impermissible. The Action has not cited any teaching or motivation to include, or explained how, a helix could be incorporated into the system of Blechle. Furthermore, the Action has not explained why one skilled in the art would in any way be motivated to attempt to incorporate a helix into the system of Blechle. In Blechle, when the solenoid (68) is actuated the stepped portion (84) pushes the medication container (108) out the cartridge (90). A helix, even if it were somehow possible to install in Blechle, would serve no purpose. The Action has not explained how a helix could be incorporated into the cartridge (90) of Blechle. Thus, Blechle would not be improved with the addition of a helix. Clearly, one skilled in the art would not have attempted to incorporate a helix into the system of Blechle. Any alleged modification involving a helix, if it were somehow even possible, would appear to destroy the utility or advantage of Blechle and render the disclosed device of Blechle inoperable.

A reference teaching away from the recited invention does not support prima facie obviousness. It is also legally improper to reconstruct a claimed invention from the disclosure of the Applicants. An obviousness rejection cannot be based on a combination of features in references if making the combination would result in destroying the utility or advantage of the device shown in the prior art references. *In re Fine* 5 USPQ2d 1598-99 (Fed. Cir. 1988). It is respectfully asserted that the rejection is not appropriate.

Furthermore, even if it were somehow possible for Blechle to add the features of Kraft, Blechle would still lack the recited features and relationships of the dispenser module being movably mounted in the manner recited. Blechle would not disclose a “mounted” dispenser module including a “holder” and “a dispenser mechanism” in the manner specifically recited. Blechle would not disclose moving a dispenser module, while mounted, including a “holder” and “a dispenser mechanism” in the manner recited. Hence, Kraft does not disclose or suggest the recited features and relationships that are also not found in Blechle.

Additionally, in regard to claim 60, neither Blechle nor Kraft alone or in combination disclose or suggest “a further dispenser module” and dispensing “a supporting card” in the manner recited. Even if Kraft disclosed these features and relationships, it would not have been obvious to have included these features and relationships into a structure like that disclosed in Blechle. Neither Blechle nor Kraft alone or in combination, disclose or suggest “moving the mounted dispenser module from the first position to the second position” in the manner recited. Furthermore, even if it were somehow possible for Blechle to add the features of Kraft, Blechle would still lack the recited features and relationships of the dispenser module being movably mounted in the manner recited.

Additionally, in regard to claim 61, neither Blechle nor Kraft alone or in combination disclose or suggest a “guide arrangement” capable of supporting and guiding a dispenser module during dispenser module movement, in the manner recited. Furthermore, even if Kraft disclosed these features and relationships, it would not have been obvious to have included these features and relationships into Blechle. Neither Blechle nor Kraft alone or in combination disclose or

suggest a dispenser module movable while in supporting connection with an enclosure, in the manner recited. Furthermore, even if it were somehow possible for Blechle to add the teachings of Kraft, Blechle would still lack the recited features and relationships of the dispenser module being movable while in supporting connection with the enclosure as recited.

Neither Blechle nor Kraft alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims. Neither Blechle nor Kraft alone or in combination disclose or suggest the recited method.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in Applicants' claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicants' claimed invention, it is respectfully submitted that the claims are allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome.

Features recited in other claims even further patentably distinguish over the applied art.

Claim 44

Claim 44 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied references. The claim specifically recites "the holder includes the helix." The claim further recites "engaging a holder guide in operative connection with the dispenser module, wherein a first portion of the holder guide is extended in an inside area within the helix and a second portion of the holder guide extends in an exterior area outside of the helix." Neither Blechle nor Kraft alone or in combination disclose or suggest that a

“holder includes the helix” and a “holder guide” in the manner recited. Neither Blechle nor Kraft alone or in combination disclose or suggest the recited method.

The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “helix” and “holder guide.” Nor does Kraft disclose such features in the manner recited. Nor would it have been obvious to have included Blechle with such features. Thus, it is respectfully submitted that claim 44 is further allowable.

Claim 46



Claim 46 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that a “reference surface includes indicia thereon indicative of the number of medical items in the holder.” The claim further recites “reading the indicia on the reference surface.” Neither Blechle nor Kraft alone or in combination disclose or suggest “indicia” on a “reference surface” in the manner recited. Neither Blechle nor Kraft alone or in combination disclose or suggest the recited method. Thus, it is respectfully submitted that claim 46 is further allowable.

Claim 48

Claim 48 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the holder includes a rotatable helix.” The claim further recites “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix.” Neither Blechle nor Kraft alone or in combination disclose or suggest a “rotatable helix” and a “limiting member” in

the manner recited. Neither Blechle nor Kraft alone or in combination disclose or suggest the recited method.

The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “rotatable helix” and “limiting member.” Nor does Kraft disclose such features in the manner recited. Nor would it have been obvious to have included Blechle with such features. Thus, it is respectfully submitted that claim 48 is further allowable.

Claim 55

Claim 55 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “the holder includes the helix.” The claim further recites “engaging a holder guide in operative connection with the dispenser module, wherein a first portion of the holder guide is extended in an inside area within the helix and a second portion of the holder guide extends in an exterior area outside of the helix.” Neither Blechle nor Kraft alone or in combination disclose or suggest that a “holder includes the helix” and a “holder guide” in the manner recited. Neither Blechle nor Kraft alone or in combination disclose or suggest the recited method.

The Action references Kraft at col. 8, lines 25-67. However, this referenced section of Kraft lacks the recited “helix” and “holder guide.” Nor does Kraft disclose such features in the manner recited. Nor would it have been obvious to have included Blechle with such features. Thus, it is respectfully submitted that the claim is further allowable for these reasons.

Claim 59

Claim 59 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the holder includes a rotatable helix.” The claim further recites “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix.” Neither Blechle nor Kraft alone or in combination disclose or suggest a “rotatable helix” and a “limiting member” in the manner recited. Neither Blechle nor Kraft alone or in combination disclose or suggest the recited method.

The Action references Kraft at col. 8, lines 25-67. However again, this referenced section of Kraft lacks the recited “rotatable helix” and “limiting member.” Nor does Kraft disclose such features in the manner recited. Nor would it have been obvious to have included Blechle with such features. Thus, it is respectfully submitted that claim 59 is further allowable.

Claim 62

Claim 62 depends from claim 61 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites “dispensing a first medical item including a supporting card from the first dispenser module.” The claim further recites “dispensing a second medical item including a generally cylindrical liquid holding container from the second dispenser module.” Neither Blechle nor Kraft alone or in combination disclose or suggest the “dispensing” of first and second medical items in the manner recited. Neither Blechle nor Kraft alone or in combination disclose or suggest the recited method.

Neither Blechle nor Kraft alone or in combination disclose or suggest “dispensing a first medical item including a supporting card from the first dispenser module” or “dispensing a second medical item including a generally cylindrical liquid holding container from the second dispenser module” in the manner recited. Thus, it is respectfully submitted that claim 62 is further allowable.

**The Pending Claims Are Not Obvious Over
Higham in view of Blechle**

In the Action claims 40-43, 46-47, 49-54, and 57-62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Higham in view of Blechle. These rejections are respectfully traversed.

Applicants traverse these rejections on the grounds that Applicants’ claims recite features and relationships which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion or motivation cited so as to produce Applicants’ invention. The features recited in Applicants’ claims patentably distinguish over the applied references.

The Office Action admits that Higham does not disclose “closing the door”; a “cylindrical holding container contains a liquid”; “providing the holder with a plurality of items arranged in a stack”; “engaging a follower in engagement with the stack”; and “adding a plurality of medical items to the holder in side by side relation to a stack.” The Office Action asserts that Blechle discloses such features. The Office Action further asserts that it would have been obvious for Higham to have such features.

The Applicants disagree. Higham does not disclose or suggest the features and relationships that are specifically recited in the claims. Blechle lacks the capability of adding the recited features that are not found in Higham. Neither Higham nor Blechle alone or in combination, disclose or suggest the features and relationships that are specifically recited in the claims. Neither Higham nor Blechle alone or in combination disclose or suggest the recited method.

As nothing in the cited references disclose nor suggest the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicants' invention, it is respectfully submitted that these claims are allowable. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections have been overcome.

Claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62

Applicants' arguments concerning the Higham reference discussed above in support of the patentability of claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62 are incorporated by reference as if fully rewritten herein. Blechle does not disclose or suggest the recited features or relationships that are not found in Higham. Applicants' arguments concerning the Blechle reference discussed above in support of the patentability of claims 40, 42-43, 49-51, and 60-61 are incorporated by reference as if fully rewritten herein.

It is noted that claim 59 was not previously rejected by either the single reference of Higham or the single reference of Blechle. Therefore, it is respectfully submitted that the Action

by inference has admitted that neither Higham nor Blechle disclose or suggest the subject matter of claim 59. It is respectfully submitted that claim 59 is therefore allowable.

As previously discussed, in the operation of Higham, an item can be manually placed into or removed from a particular receptacle (36) of an open drawer (32) (col. 16, lines 37-45; col. 18, lines 43-47). Higham does not disclose or suggest a dispenser module including a “dispenser mechanism.” Higham does not disclose or suggest that a “dispenser mechanism” is “selectively operable to dispense medical items from the holder.” Higham’s manual removal of items specifically teaches away from using the recited “dispenser mechanism” to dispense medical items.

As previously discussed, Blechle shows a cartridge (90) for insertion into a dispenser (60). Stacked medication containers (108) are contained in the interior storage space (102) of the cartridge (90). Upon actuation of the solenoid (68), the stepped portion (84) urges the medication container (108) resting on the dispensing platform (86) out the aperture (88) where gravity induces it to fall to the drawer (28).

In Higham an item is manually placed or removed. Therefore, it would not have been obvious to modify Higham as alleged in the Action. In Higham a medical item is not capable of being dropped or falling by gravity to a lower location. In Higham a drawer is opened and an item is manually removed. In Higham there is no dispenser mechanism because the items are manually removed from the drawer. Hence, Higham has no need for the recited dispenser mechanism, and there is no possible motivation to include such a feature therein.

The solenoid system of Blechle is contrary to the manual system of Higham. Any assertion that one could incorporate a dispenser mechanism into Higham, is clearly an attempt at hindsight reconstruction of Applicants' claimed invention, which is impermissible.

Furthermore, the Action has not cited any teaching or motivation in the applied art, or explained how, a dispenser mechanism could be incorporated into the manually operated drawer system of Higham. Furthermore, the Action has not explained or cited any motivation why one skilled in the art would ever attempt to incorporate a dispenser mechanism into the manually operated drawer system of Higham. When a drawer of Higham is opened, then the items are readily accessible. A dispenser mechanism, even if it were somehow possible to install in Higham, would serve no purpose. Thus, Higham would not be improved with the addition of a dispenser mechanism. Clearly, one skilled in the art would have no motivation to attempt to incorporate a dispenser mechanism into the manually operated drawer system of Higham. Any alleged modification involving a dispenser mechanism, if it were somehow even possible, would appear to destroy the utility or advantage of Higham and render the disclosed drawer system of Higham inoperable.

A reference teaching away from the recited invention does not support prima facie obviousness. It is improper to reconstruct the invention from the disclosure of the Applicants. An obviousness rejection cannot be based on a combination of features in references if making the combination would result in destroying the utility or advantage of the device shown in the prior art references. *In re Fine*, 5 USPQ2d 1598-99 (Fed. Cir. 1988). It is respectfully asserted that the rejection is improper for this reason.

In regard to Applicants' claims 52 and 53, Higham also lacks the recited path and delivery area. The arrangement of Higham's drawer system cannot reasonably be modified to include the recited features and relationships of a path and a delivery area. Therefore, even if Blechle disclosed these features and relationships, it would not have been obvious to have included these features and relationships in a structure like that of Higham.

Neither Higham nor Blechle alone or in combination disclose or suggest the features and relationships that are specifically recited in the claims. Neither Higham nor Blechle alone or in combination disclose or suggest the recited method.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in the claims, and because there is no teaching, suggestion or motivation cited for combining features of the cited references so as to produce Applicants' invention, it is respectfully submitted that the claims are allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome.

Features and relationships recited in Applicants' dependent claims further distinguish over the cited art.

Claim 50

Claim 50 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that "medical items are biased to move by gravitational force" and "providing a follower in engagement with the stack, wherein in the first position the follower provides additional biasing force on the stack." Neither Higham nor Blechle alone or in combination, disclose or suggest medical items "biased to move

by gravitational force” and a “follower in engagement with the stack” in the manner recited. Neither Higham nor Blechle alone or in combination disclose or suggest the recited method. Thus, it is respectfully submitted that the claim is further allowable.

Claim 51

Claim 51 depends from claim 40 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “medical items are biased to move by gravitational force” and a “movably positionable guide extending adjacent the stack” and a “generally cylindrical rotatably movable follower, including at least one annular groove, in operative engagement with the stack.” Neither Higham nor Blechle alone or in combination disclose or suggest medical items “biased to move by gravitational force” and a “movably positionable guide” and a “generally cylindrical rotatably movable follower” in the manner recited. Neither Higham nor Blechle alone or in combination disclose or suggest the recited method. Thus, it is respectfully submitted that claim 51 is further allowable for these reasons.

Claim 59

Claim 59 depends from claim 53 and further recites features that patentably distinguish the claimed invention over the applied art. The claim specifically recites that “the holder includes a rotatable helix.” The claim further recites “extending a limiting member in the inside area of the helix, wherein the limiting member is operative to prevent a medical item from passing through the inside area of the helix absent rotation of the helix.” Neither Higham nor Blechle alone or in combination disclose or suggest a “rotatable helix” and a “limiting member”

in the manner recited. Neither Higham nor Blechle alone or in combination disclose or suggest the recited method. Thus, it is respectfully submitted that claim 59 is further allowable.

Claim 61

Claim 61 is an independent method claim. The claim specifically recites first and second dispenser modules “in movably supporting connection with the enclosure” through first and second guide arrangements, wherein the guide arrangements are adapted to guide the dispenser modules “during movement.” Neither Higham nor Blechle alone or in combination disclose or suggest a “guide arrangement” capable of supporting and guiding a dispenser module during dispenser module movement, in the manner recited. Furthermore, even if Blechle disclosed these features and relationships, it would not have been obvious to have included these features and relationships into Higham. Inclusion of these features and relationships into Higham would destroy the utility or advantage of Higham and render the disclosed device of Higham inoperable.

Neither Higham nor Blechle alone or in combination disclose or suggest a dispenser module movable while in supporting connection with the enclosure. Furthermore, neither Higham nor Blechle alone or in combination disclose or suggest guide arrangements “interchangeably engageable to support either the first or second dispenser modules” in the manner recited. Furthermore, as previously discussed, Higham does not disclose or suggest dispenser modules that are “selectively operative to dispense medical items.” The above arguments against modifying Higham to be “selectively operative to dispense medical items” are incorporated by reference as if fully rewritten herein. Neither Higham nor Blechle alone or in combination disclose or suggest the recited method.

As nothing in the cited art discloses nor suggests the features and relationships that are specifically recited in Applicants' claim, and because there is no teaching, suggestion or motivation cited in the Action for combining features of the cited references so as to produce Applicants' invention, it is respectfully submitted that claim 61 is allowable for these reasons. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejection has been overcome.

Additional Comments

The Action does not state in any way that is reasonably understandable by Applicants, where the specific features recited in Applicants' claims are allegedly found in the cited art. Not one rejection based on prior art has specifically labeled all of the claimed features allegedly disclosed in the applied reference(s). Nor is there any citation to any alleged teaching, suggestion, or motivation to combine features of the prior art to produce the invention as claimed by Applicants. For this reason it is respectfully submitted that the Action fails to establish anticipation or a prima facie case of obviousness against any of Applicants' claims and the rejections should be withdrawn.

The previous Response respectfully asked the Office to clearly state on the record which specific (numbered) features in the Higham reference and the Blechle reference directly corresponded to the claimed dispenser, enclosure, dispenser module, holder, dispenser mechanism, and medical item. However, the Action has not addressed or answered Applicants' request or traversals. Therefore, it is respectfully submitted that the Office is not in compliance with MPEP 707.07(f) which clearly states "Where the requirements are traversed, or suspension

thereof requested, the examiner should make proper reference thereto in his or her action on the amendment. Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." For these additional reasons the rejections should be withdrawn.

Applicants are entitled to a clear presentation of any rejection. However, neither the previous nor the present Action have presented a clear presentation of any rejection. Therefore, it is respectfully submitted that the Office is not in compliance with MPEP 707.07(d) which clearly states "where a claim is refused for any reason relating to the merits thereof it should be rejected and the ground of rejection fully and clearly stated." Instead, the Office has nonsuccinctly referred to lengthy lines of text in the applied references without any specificity. The references themselves clearly identify therein all of their different elements with corresponding reference numerals. Why can't the Office simply state which reference numerals allegedly correspond to Applicants' recited elements? Applicants are entitled to know which exact reference numerals that the Office considers to allegedly correspond to the recited elements. Anything less is an attempt by the Office to clandestinely and unfairly reject without having to explain on the record the exact rejection. Furthermore, because the basis for the rejections have not been properly communicated, Applicants have not been given a fair opportunity to properly reply.

The Action's failure to specifically indicate the presence of the recited claim features in the references constitutes Agency Action under the Administrative Procedures Act admitting that the references do not meet the recited claim features.

Additionally, Applicants take exception to the mention of other non-rejected claims in the body of rejections. For example, claims 52, 53, 57, and 58 do not form any part of the 35 U.S.C. § 102 rejection by Higham yet they are mentioned in the body of rejection. Also, for example, claims 52, 53, 57, and 58 do not form any part of the 35 U.S.C. § 102 rejection by Kraft yet they are mentioned in the body of rejection. Additionally, for example, claims 52 and 53, do not form any part of the 35 U.S.C. § 102 rejection by Blechle yet they are mentioned in the body of rejection. For these additional reasons the rejections should be withdrawn.

These comments provide some examples of the unclear, confusing, unsupported, and incongruent rejections that have been presented to Applicants without regard to the statutes, rules, Office procedures, or teachings of the references. For these reasons it is respectfully requested that the rejections be withdrawn.

Fees For Additional Claims

Please charge the fees associated with the submission of five additional claims in excess of twenty claims (\$90) and any other fee due to deposit account 04-1077.

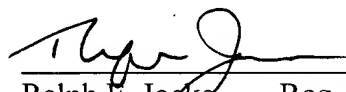
Conclusion

Each of Applicants' pending claims specifically recite features and relationships that are neither disclosed nor suggested in any of the applied art. Furthermore, the applied art is devoid of any such teaching, suggestion, or motivation for combining features of the applied art so as to

produce Applicants' invention. Allowance of all of Applicants' pending claims is therefore respectfully requested.

The undersigned will be happy to discuss any aspect of the Application by telephone at the Examiner's convenience.

Respectfully submitted,



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